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OFFICE OF PETITIONS

In re Application of :
Scott R. Smith :
Application No. 10/017,213 : DECISION ON PETITION
Filed: 14 December, 2001 :
Atty Docket No. S13.12-0111 :

This is a decision on the petition filed on 27 May, 2005, under 37 CFR 1.137(b)¹, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned on 16 September, 2004, for failure to file a proper reply to the final Office action mailed on 15 June, 2004, which set a three (3) month shortened statutory period for reply. On 7 December, 2004 (certificate of mailing date 17 August, 2004), petitioners filed an amendment after final rejection. The amendment did not place the case in *prima facie* condition for allowance, however, and petitioners were so notified in the Advisory Action mailed on 13 January, 2005.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

Petitioners have filed a Request for Continued Examination (RCE) and an amendment as the submission required under 37 CFR 1.114.

The statement contained in the instant petition does not set forth that the entire delay from the due date of the required reply to the date of the filing of a grantable petition was unintentional as required by 37 CFR 1.137(b)(3). However, the statement contained in the instant petition is being so construed. Petitioner **must** notify the Office if this is not a correct interpretation.

The address listed on the petition filed on 27 May, 2005, is different than the correspondence address of record. A courtesy copy of this decision is being mailed to the address noted on the petition. However, until otherwise instructed, all future correspondence regarding this application will be mailed solely to the address of record.

This application is being referred to Technology Center Art Unit 3737 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



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